

CHAPTER 354
FORMERLY
HOUSE SUBSTITUTE NO. 1
FOR
HOUSE BILL NO. 262

AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO THE LAND PROTECTION ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 75, Title 7 of the Delaware Code *as follows*:

§ 7502. Declaration of policy.

The General Assembly finds that:

(4) Rapid growth and spread of urban development is encroaching upon, or eliminating, many open areas and spaces of varied size and character and many sites with important cultural and natural resources. These areas, spaces, and sites, if preserved and maintained in their present open state, constitute important physical, biological, social, aesthetic, recreational, or economic assets.

(5) The State must continue to permanently protect substantial quantities of such lands as are now available and appropriate so that they may be preserved and developed for the purposes enumerated herein.

(6) It is the public policy of the State that the permanent protection of land shall be accomplished through the voluntary acquisition of interests or rights in land, or donation of said lands, and that said acquisition or donation constitutes a public purpose for which public funds have been expended or advanced and should be continued.

§ 7503. Purpose.

(a) State agencies may permanently protect land for the following purposes, to carry out and expand on the intent of the Open Space Program:

- (1) To protect and conserve all forms of natural and cultural resources.
- (2) To protect and conserve the biological diversity of plants and animals and their habitat.
- (3) To protect or expand existing or planned parks, forests, wildlife areas, nature preserves or other recreation, conservation, or cultural sites.
- (4) To preserve sites of special natural, cultural, or geological interest.
- (5) To connect existing open spaces into a cohesive system of greenways and resource areas.
- (6) To provide for public outdoor recreation.
- (7) To allow for water resource conservation.

(b) State agencies may permanently protect land pursuant to this chapter by the use of direct acquisition for cash, by purchase money mortgage, by installment sale, or by other methods or incentives as determined by the Secretary after consultation with the Secretary of Finance. State agencies shall not exercise the "right of eminent domain" or adopt regulations to restrict or otherwise control the development of land that is privately held and that may be eligible for permanent protection under this chapter to carry out the purposes of this chapter. Participation in the Open Space Program and all transactions to permanently protect land under this chapter shall be voluntary.

§ 7504. Definitions.

As used in this chapter:

(1) "Conservation Trust Fund" means the Delaware Land and Water Conservation Trust Fund established and maintained pursuant to Subchapter II of Chapter 54 of Title 30.

(3) "Cultural resource site" means land that contains at least 1 of the following:

- a. Archaeological resources.
- b. An area listed or eligible for listing on the National Register of Historic Places.

(4) [Repealed.]

(5) "Land" or "lands" means real property, including improvements thereon; rights of way; water, subaqueous land, and riparian rights; easements; privileges; and all other rights or interests of any kind or description in, relating to, or connected with real property or water.

(6) "Open space" or "open space land" means any land the permanent protection of which will further 1 or more purposes enumerated in § 7503(a) of this chapter.

(7) "Open Space Program" means the conservation program created to carry out the purposes of this chapter.

(8) "Permanent protection", "permanently protected", or "permanently protect", means the acquisition by purchase, gift, grant, bequest, devise, or otherwise of the fee or any lesser interest, development right, easement, covenant, or other contractual right in land in perpetuity necessary to achieve the purposes of this chapter.

(9) [Repealed.]

(10) "Secretary" means the Secretary of the Department of Natural Resources and Environmental Control.

(11) "State agency" means, and shall apply exclusively to, the following units of state government which manage natural and cultural resources:

a. Department of Natural Resources and Environmental Control (Division of Parks and Recreation and Division of Fish and Wildlife).

b. Department of State (Division of Historical and Cultural Affairs).

c. Department of Agriculture (Delaware Forest Service).

(12) [Repealed.]

§ 7505. Delaware Open Space Council.

(a) There is created a Delaware Open Space Council to advise the Secretary on all matters relating to the administration, implementation, and financing of the Open Space Program; site selection; methods of protection; and interagency and intergovernmental coordination among public agencies and private land preservation organizations. The Council shall consist of the following:

(b) The Secretaries of the Departments of Agriculture and State, the Director of the Delaware Economic Development Office, and the State Liaison Officer for the federal Land and Water Conservation Fund, or designees appointed by the respective Secretary, Director, or Officer, who shall be ex officio advisors to the Council without voting powers.

(d) The Department shall furnish clerical, technical, legal, and other services required by the Council in the performance of its official duties.

(e) Members of the Council shall receive no compensation but may be reimbursed for their actual and necessary expenses incurred in the performance of their official duties.

(f) For purposes of conducting business of the Council, 5 voting members shall constitute a quorum. Except as otherwise provided in this chapter, a majority vote of the members present at a meeting at which a quorum is present shall be required on any action or matter before the Council.

(g) The Council may adopt procedural rules to carry out its functions under this chapter.

(h) The Council shall hold at least 1 regularly-scheduled public meeting in each quarter of each calendar year and keep a record of its proceedings. At regularly-scheduled meetings, the Council shall conduct its affairs, review land that the State agencies bring before it for permanent protection, and make recommendations to the Secretary. Council shall conduct its proceedings in accordance with Chapter 100 of Title 29.

§ 7506. Powers and duties of the Council.

In addition to its other powers and duties provided in this chapter, the Council shall:

(1) Advise and consult with the Secretary, Department, and State agencies on preservation matters.

(2) Advise and consult with the Secretary regarding any change from permanently protected status of open space acquired or otherwise protected under this chapter.

(3) Develop, in conjunction with the State agencies and with public input, an Open Space Program Plan ("Plan") for the Council's consideration and approval.

a. The Plan shall include the Council's and State agencies' strategies, goals, and priorities for the application of funds available for the permanent protection of land.

b. The Plan may include analysis and discussion of various creative and innovative methods to secure the permanent protection of open space land, including:

1. Local and regional land trusts.
2. Conservation and preservation easements on a statewide basis.
3. Purchase of less than a fee simple interest in land.
4. Programs to create financial incentives for private sector contributions to establish operations and maintenance funds for open space land protected under this chapter.
5. An analysis, in conjunction with all appropriate public and private conservation entities, of the best practices for fee simple and conservation easement options for protecting forest and freshwater wetland habitats and other land eligible for permanent protection.

c. The Council and State agencies shall review the Plan every 5 years and may update the Plan as necessary.

(4) Encourage the Secretary to analyze, in conjunction with the Department of Finance, the state and local tax codes and formulate incentives to encourage landowners and developers to maintain their lands that qualify as open space in an undeveloped state or to sell or donate such lands to the State or private land preservation organizations.

(5) Encourage the Department, private land preservation organizations, and interested private sector entities to preserve and protect open space for the benefit of the citizens of this State.

§ 7507. [Repealed.]

§ 7507A. Open space: criteria, evaluation, and permanent protection.

(a) To be eligible for permanent protection, an area of land must include or exhibit, in whole or in part, 1 or more of the following criteria:

- (1) Contains rare species, as determined by on-site verification conducted with landowner permission which is provided in writing.
- (2) Has significant potential to support rare species.
- (3) Is a cultural resource site or near a cultural resource site.
- (4) Includes or enhances important wildlife habitat or migration corridors, or potential wildlife habitat or migration corridors.
- (5) Has significant forest resources.
- (6) Has wetlands, floodplains, or other lands necessary for the protection of water resources.
- (7) Contains significant or unique ecosystems, natural features, or geological features.
- (8) Is an inholding, contiguous to or near lands that are already preserved or protected, or planned to be preserved or protected, by federal, state, local, or other conservation agencies, groups, or entities.
- (9) Provides for public outdoor recreation.
- (10) Allows natural systems or plants and animals to accommodate or adapt to climate change or other large-scale changes in ecosystem processes.
- (11) Possesses other characteristics that would make its acquisition consistent with and promote 1 or more of the purposes of this chapter.

(b) Evaluating lands being considered for permanent protection.

(1) The State agencies shall adopt, with the input of the Council and after notice and public hearing pursuant to Chapter 101 of Title 29, guidelines to evaluate land being considered for permanent protection.

(2) The State agencies may amend the guidelines, following the procedure set forth in paragraph (b)(1) of this section.

(3) The State agencies shall use the guidelines to evaluate lands that a landowner has offered for permanent protection to ensure that the land should be permanently protected and that permanently protecting the land furthers the purposes of this chapter.

(c) Protected land maps. The Department shall regularly update and make accessible to the public through electronic means maps of the land which is permanently protected in each of the 3 counties in this State.

(1) The protected land maps shall show the land protected by public entities and private land preservation organizations.

(2) The purpose of the protected land maps is to do all of the following:

a. Inform the public of the lands which are permanently protected by public entities and private land preservation organizations.

b. Guide the Council and State agencies in the review and evaluation of land for permanent protection.

c. Inform the public and guide the Council and State agencies about where the Council and State agencies should prioritize the use of funds available for the Open Space Program to further the purposes of this chapter.

(3) The Department shall highlight on the protected land maps only those areas of the State which are protected by public entities or that are conserved by private land preservation organizations. The Department may not highlight privately-owned land on a protected land map.

(d) Permanent protection of land. To permanently protect land, all of the following shall occur:

(1) The Council shall do all of the following:

a. Review land that the State agencies bring before it for permanent protection.

b. Recommend to the Secretary the land that the Council determines should be permanently protected.

(2) The Secretary shall review the Council's recommendation and make a final determination whether to permanently protect the land that the Council has recommended under paragraph (d)(1)b. of this section.

§ 7507B. Access to land; limitations on use and disclosure of data.

(a) A representative of the Council or State agency may access land being considered for permanent protection to perform onsite verification to gather information about the land only after the landowner executes a written permission form granting the Council or State agency representative permission to access the land.

(b) If a representative of the Council or State agency collects data during an onsite verification of land that establishes the presence of at least 1 of the criteria listed in paragraphs 7507A(a)(1), (2), or (7) of this title during the negotiations for the permanent protection of that land, and the negotiations do not result in the permanent protection of that land, an agency or political subdivision of this State, including county and municipal governments, or person, as defined in § 302 of Title 1, may not use the data for any of the following purposes:

(1) To incorporate the data into a comprehensive plan; overlay zoning ordinance; guideline; specific or technically-based performance standard, design criterion, or mitigation requirement; or for any other restrictions on land use.

(2) To deny, delay, or recommend the denial or delay of a permit or license.

(3) To place any condition or restriction on a permit or license.

(4) To charge additional fees on a permit or license.

(c) Nothing in this chapter may be construed to prohibit the Council or State agency representative from reporting to the proper authorities any information or data obtained about the property concerning a violation of any environmental, public health, or safety laws or regulations or information that is otherwise required to be reported.

(d) Data collected under this section related to negotiations that do not result in the permanent protection of land are not public records and may not be disclosed under Chapter 100, Title 29.

§ 7508. [Repealed.]

§ 7509. Program administration.

(a) The Department shall administer the Open Space Program. Direct costs associated with the administration of the Open Space Program shall be paid from the Conservation Trust Fund.

(b-d) [Repealed.]

(e) Reporting to the Governor and General Assembly.

(1) Five years after [the enactment of this Act], and every 5 years thereafter through the life of the Open Space Program, the Secretary and the Council shall report to the Governor and the General Assembly

on the status and accomplishments of the Open Space Program with recommendations regarding continuation of the Open Space Program.

(2) The Secretary and the Council shall file annual reports with the General Assembly detailing the accomplishments and activities of the Open Space Program.

Section 2. Land may continue to be permanently protected under the Open Space Program's Property Ranking Process, which the Open Space Council adopted in and has used since December 2011, until the guidelines required in § 7507A(b) of Title 7 are adopted or June 1, 2017, whichever occurs first.

Approved August 03, 2016